

THE STATE OF TEXAS

COUNTY OF HARRIS

RFP # TC-4-0739-039-20215

ORDINANCE 05-0942

CONTRACT # 57201

## I. PARTIES

### A. Address

THIS AGREEMENT FOR DISASTER AMBULANCE TRANSPORT SERVICES ("Agreement") is made on the Countersignature Date between the CITY OF HOUSTON, TEXAS ("City"), a municipal corporation and AMERICAN MEDICAL RESPONSE ("Contractor"), a corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

#### City

City Purchasing Agent  
Chief of Houston Fire Department  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

#### Contractor

American Medical Response  
7509 South Freeway  
Houston, Texas 77021  
Phone: 713-741-7474  
Fax: 713-747-2051

The Parties agree as follows:

### B. Table of Contents

This Agreement consists of the following sections:

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#### EXHIBITS

- A. DEFINITIONS
- B. SCOPE OF SERVICES
- C. EQUAL EMPLOYMENT OPPORTUNITY
- D. DRUG POLICY COMPLIANCE AGREEMENT
- E. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- F. DRUG POLICY COMPLIANCE DECLARATION
- G. FEES AND COSTS

#### **C. Parts Incorporated**

The above-described sections and exhibits are incorporated into this Agreement.

#### **D. Controlling Parts**

If a conflict among the sections or exhibits arises the Exhibits control over the Sections.

#### **E. Definitions**

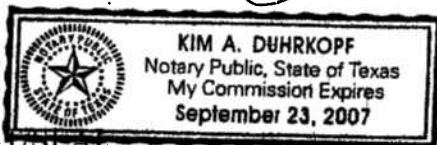
Certain terms used in this Agreement are defined in Exhibit "A".

F. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):  
WITNESS (if not a corporation):

By: Kim A. Duhrkopf  
Name:  
Title:



ATTEST/SEAL.

[Signature]

City Secretary

APPROVED:

[Signature]  
City Purchasing Agent

AMERICAN MEDICAL RESPONSE

By: [Signature]  
Name: STEVE ALDRETE  
Title: VICE PRESIDENT OF OPERATIONS  
Federal Tax ID Number: 76-0487923

CITY OF HOUSTON, TEXAS  
Signed by:

[Signature]

Mayor

[Signature]  
COUNTERSIGNED BY [Signature]  
City Controller

DATE COUNTERSIGNED:

8/16/05

APPROVED:

[Signature]  
Chief, Houston Fire Department

APPROVED AS TO FORM:

[Signature]  
Senior Assistant City Attorney  
L.D. File No. \_\_\_\_\_

## **II. DUTIES OF CONTRACTOR**

### **A. Scope of Services**

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "B."

### **B. RELEASE**

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

### **C. INDEMNIFICATION**

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTA TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

**D. INDEMNIFICATION PROCEDURES**

- (1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
  - (a) a description of the indemnification event in reasonable detail,
  - (b) the basis on which indemnification may be due, and the anticipated amount of the indemnified loss.

This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

- (2) Defense of Claims
  - (a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days

after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

- (b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

#### **E. Insurance**

Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence and \$3,000,000 aggregate

Automobile Liability Insurance (for vehicles Contractor uses in performing under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)	\$3,000,000 combined single limit
Professional Liability	\$1,000,000 per occurrence and \$3,000,000 aggregate

Defense costs are excluded from the face amount of the policy.  
Aggregate Limits are per 12-month policy period  
unless otherwise indicated.

- (2) Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves Contractor from its duties to provide the required coverage under this Agreement. The Director's actions or inactions do not waive the City's rights under this Agreement.
- (3) Issuers of Policies. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide.
- (4) Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.
- (5) Deductibles. Contractor shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.
- (6) Cancellation. Each policy must state that it may not be canceled, materially modified, or nonrenewed unless the insurance company gives the Director 30 days' advance written notice. Contractor shall give written notice to the Director within five days of the date on which total claims by any party against Contractor reduce the aggregate amount of coverage below the amounts



required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.

- (7) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.
- (8) Endorsement of Primary Insurance. Each policy, except Workers' Compensation and Professional Liability (if any), must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.
- (9) Liability for Premium. Contractor shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
- (10) Subcontractors. Contractor shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence. Contractor shall provide copies of insurance certificates to the Director.
- (11) Proof of Insurance.
  - a. On the Effective Date and at any time during the Term of this Agreement, Contractor shall furnish the Director with Certificates of Insurance, along with an Affidavit from Contractor confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, Contractor shall furnish the City with certified copies of Contractor's actual insurance policies.
  - b. Contractor shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may
    - i. immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
    - ii. purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

- (12) Other Insurance. If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

**F. Warranties**

Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas and the Department of State Health Services (DSHS) EMS Provider Rules, with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.

**G. Licenses and Permits**

Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

**H. Compliance with Equal Opportunity Ordinance**

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

**I. Drug Abuse Detection and Deterrence**

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D," together with a written designation of all safety impact positions and,

- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "E."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

#### **J. Environmental Laws**

Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations (Environmental Laws). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

**K. Contractor's Performance**

Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Fire Chief's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards. Contractor shall require the same standards of its sub-contractors.

**L. Payment of Employees and Subcontractors**

Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.

Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.

**CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTORS FAILURE TO MAKE THESE PAYMENTS.**

Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

**III. DUTIES OF CITY**

**A. Payment Terms**

1. For patients who are either covered by Medicare, Medicaid or private health insurance, Contractor shall apply for and accept fees for ambulance services from the insurer.
2. For all other patients Contractor shall accept fees at the unit prices provided in Exhibit "G" for all services rendered by Contractor. The fees shall only be paid from Allocated Funds, as provided below.

Any quantities of services shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

**B. Taxes**

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Fire Chief will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

**C. Method of Payment**

The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Fire Chief, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

**D. Method of Payment - Disputed Payments**

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Fire Chief, shall temporarily delete the disputed item and pay the remainder of the invoice. The Fire Chief shall promptly notify Contractor of the dispute and request remedial action. If the dispute is settled in favor of the Contractor, Contractor shall include the agreed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only. If the dispute is settled in favor of the City, the City shall not pay the disputed amount.

**E. Limit of Appropriation**

- (1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- (2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$0.00 to pay money due under this Agreement (the "Original Allocation"). Contractor shall have no duty to perform until City allocates funds. The executive and legislative officers of the City, in their

discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

- (3) The City makes a supplemental allocation by sending a notice signed by the Fire Chief and the City Controller to Contractor and where appropriated, approved by motion, or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$\_\_\_\_\_, upon the request of the below-signed Fire Chief, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Agreement, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$\_\_\_\_\_.

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Fire Chief)

Fire Chief

- (4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

**F. Changes**

- (1) At any time during the Agreement Term, the City Purchasing Agent or Fire Chief upon written authorization by the City Purchasing Agent may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- (2) The City Purchasing Agent or Fire Chief upon written authorization by the City Purchasing Agent will issue the Change Order in substantially the following form:

**CHANGE ORDER**

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of Notice]

SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of City Purchasing Agent or Fire Chief upon written notice to the City Purchasing Agent]

- (3) The City Purchasing Agent or Fire Chief upon written authorization by the City Purchasing Agent may issue more than one Change Order, subject to the following limitations:
  - (a) Council expressly authorizes the City Purchasing Agent or Fire Chief upon written authorization by the City Purchasing Agent, to approve a Change Order of up to \$5,000. A Change Order of more than \$5,000 over the approved contract amount must be approved by the City Council.

- (b) If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
- (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- (4) Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Fire Chief's decision regarding a time extension is final.
- (5) A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- (6) Change Orders are subject to the Allocated Funds provisions of this Agreement.

#### **IV. TERM AND TERMINATION**

##### **A. Contract Term**

This Agreement is effective on the Countersignature Date and expires five (5) years after the effective date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

##### **B. Notice to Proceed**

Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

##### **C. Renewals**

If sufficient funds are allocated, the City Purchasing Agent, at his or her sole discretion, may make a request to Contractor to renew this Agreement for up to five additional 1-year option periods, upon at least 30 days'



written notice before expiration of the initial term, or first option period, as applicable. Any renewal, pursuant to this Section, shall be upon the same terms and conditions of the Agreement.

**D. Time Extensions**

If Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

**E. Termination for Convenience**

A. The City Purchasing Agent or Fire Chief upon written authorization by the City Purchasing Agent may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

B. Contractor may terminate this Agreement at any time by giving 90 days written notice to City.

**F. Termination for Cause by City**

If Contractor defaults under this Agreement, the City Purchasing Agent may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which, exist now or in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If a default occurs, the City Purchasing Agent may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the City Purchasing Agent must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

**V. MISCELLANEOUS**

**A. Independent Contractor**

Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

**B. Force Majeure**

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions,

and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.

2. This relief is not applicable unless the affected party does the following:
  - (a) uses due diligence to remove the Force Majeure as quickly as possible; and
  - (b) provides the other party with prompt written notice of the cause and its anticipated effect.
3. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
4. If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Fire Chief upon written authorization by the City Purchasing Agent may terminate this Agreement by giving 30 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

**C. Severability**

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

**D. Entire Agreement**

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

**E. Written Amendment**

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Fire Chief is only authorized to perform the functions specifically delegated to him or her in this Agreement.

**F. Applicable Laws**

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

**G. Notices**

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

**H. Non-Waiver**

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Fire Chief, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Fire Chief is not authorized to vary the terms of this Agreement.

**I. Inspections and Audits**

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

**J. Enforcement**

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

**K. Ambiguities**

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

**L. Survival**

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

**M. Parties In Interest**

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

**N. Successors and Assigns**

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph.

This Agreement does not create any personal liability on the part of any officer or agent of the City.

**O. Business Structure and Assignments**

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or Houston Fire Chief's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's prior written consent.

**P. Remedies Cumulative**

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies, which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

## **EXHIBIT "A"**

### **DEFINITIONS**

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"Ambulance" means state certified personnel and equipment. On-board personnel will consist of a minimum of one paramedic and one EMT.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Commencement Date" means the date the Contractor receives written notice from the Fire Chief to begin the Project.

"Contractor Administrator" means the representative of the Houston Fire Department who is responsible for the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" means the Chief of the Houston Fire Department or the person he or she designates.

"Fire Chief" means the Chief of the Houston Fire Department or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body," means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article IIIJ (Environmental Laws).

"Notice to Proceed," means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

## EXHIBIT "B"

### A. General Scope of Services:

The Contractor shall furnish all labor, tools, materials, including all medical supplies, equipment, ambulances and supervision necessary to provide ambulance transportation services in strict accordance with the City of Houston Disaster Assistance Plan and in accordance with the local, state and Federal regulations. Services will be performed within the "incorporated" limits of the City of Houston or anywhere the Houston Fire Department is required to provide ambulance services.

An EMS disaster exists when the demand for EMS exceeds the resources available. In order to save lives and alleviate human suffering, the City of Houston may require private ambulance resources to respond to the City as needed to an Emergency. Services provided under this contract may only be provided for up to twelve hours unless the Mayor declares a state of local emergency.

Once a state or local emergency has been declared supplemental ambulance service provided under this contract may only be provided for the duration of the event or until the City has sufficient ambulance resources to meet its demands for service which ever occurs first.

### B. Inception/Completion:

The Contractor shall begin work only upon receipt of written/verbal notice from the Fire Chief and/or designee. The Contractor shall begin providing ambulance transportation services immediately after receiving such notice to begin from the Fire Chief and/or designee and shall work uninterruptedly, except as may otherwise ordered by the Fire Chief and/or designee.

### C. Scope:

(a) The Contractor shall place ambulances on standby status upon notification by the Fire Chief and/or designee once a State or Local Emergency is declared as specified in D1 below.

(b) The Fire Chief and/or designee reserves the right to alter the Contract Coverage Area, scope of work or other elements of this contract through the issuance of a Change Order to Contractor. The Contractor shall have no obligation to perform work under a Change Order that results in an increase or decrease in the Contract Price until the Contractor has received said Change Order. A Change Order under this Section shall not be issued unless and until sufficient sums are appropriated to cover any required additional fee.

### D. Coordinate Performance:

The Contractor shall coordinate its activities with the Fire Chief and/or designee and such other person(s) as the Fire Chief and/or designee may specify. The Contractor shall keep said person(s) currently advised on a daily basis of developments relating to the performance of this Contract, and the Contractor shall at all appropriate times advise and consult with the Fire Chief and/or designee regarding matters related to the performance of this contract.

#### D1: Ambulance Availability

##### Number of Units

2 units

##### Time from Notification to Arrival at Desired Location

30 minutes



3 additional units	90 minutes
2 additional units	4 hours
3 additional units	5 hours
9 additional units	6 hours

**D2: Staffing**

Each ambulance must have a State of Texas certified paramedic and EMT on-board.

**D3: Communications**

The Contractor shall assign a supervisor to the Houston Fire Department Command Post to be the liaison with the contractor and the Houston Fire Department. Supervisor and ambulances must have communication devices that will operate on the City of Houston frequency for dispatching and tactical communications

**D4: Licenses**

Contractor must provide proof of its Emergency Medical Service Provider's License for the State of Texas on an annual basis or as requested by the Fire Chief and/or his designee. Contractor must notify the Fire Department any time their license is under review.

**E. Standard of Performance:**

The Contractor shall provide the services as directed by this Contract in the most thorough, workmanlike and reasonable manner. Certified emergency medical personnel and competent support personnel shall staff this contract. The Fire Chief and/or designee shall have the right to remove Contractor from the job if Contractor is not performing services in such a manner.

**F. Contractor's Qualifications:**

The Contractor represents that it is fully experienced and properly qualified to perform the services called for under this Contract and that it is properly licensed, bonded (if applicable), equipped, organized, and financed to perform such services. The Contractor shall finance its own operations, shall operate as an independent contractor and not as an agent or employee of the City of Houston.

**G. Payment of Contractor:**

- 1.0 Ambulances placed on standby status by the Fire Chief or his designee will be paid the hourly rate specified in the "Fee Schedule". Rates will be to the nearest quarter hour.
- 2.0 Once a unit is assigned to a call, the standby reimbursement shall terminate. The contractor is responsible for billing patients that are transported in accordance with the usual and customary billing procedures as set by Medicare for this region at the time of transport.
- 3.0 Once a unit is placed on standby status or assigned to a call, the unit will remain in service until the Contractor receives notification from the City of Houston representative that services are no longer desired. Each request for resources to a Contractor made by the Houston Fire Department will be associated with an incident number and a request number. This request number will specify the exact quantity of resources requested. For example, a request may be for three ambulances. Resource definitions will be specified in the City of Houston Disaster Plan.

- 4.0 If the Contractor transports a patient that is unable to pay the transport fee they must submit a billing request including a copy of the patient care report to Houston Fire Department after exhausting all customary billing practices. Contractor will be paid the current Medicare rate of reimbursement. All electronic patient care reports shall be conveyed in a manner that meets DSHS and HIPAA requirements. Ambulance resources requested under this section must follow check-in and check-out requirements as established in the City of Houston Disaster Plan.
- 5.0 Prior to submitting a bill to City, Contractor shall take the following steps to collect from the patient:
- 5.1 Obtain information required for filing insurance claims, including but not limited to (a) full name and street address, (b) date of birth, (c) Social Security number, (d) primary insured, (e) full name and address of responsible party (if a minor), (f) insurance company name and policy number (g) Medicare number, (h) Medicaid number, (i) Automobile PIP insurance information, if applicable.
  - 5.2 File Medicare Claims within 12 months
  - 5.3 File Medicaid Claims within 90 days
  - 5.4 File with private insurance companies as required by the company
  - 5.5 For patients not covered by Medicare, Medicaid, or private insurance, send initial invoice plus 30, 60 and 90-day invoices to the patient, along with three follow-up phone calls. If neither payment nor insurance information has been received, Contractor can then bill City.

If patient is unable to provide information Contractor shall require its personnel to use due diligence to obtain information set out above from next of kin or responsible adult at the location where patient is picked up by Contractor's ambulance.

**H. Price Adjustments:**

Beginning on the first anniversary of the Countersignature Date of the Agreement, and each anniversary thereafter, the standby fee will be adjusted, upward or downward as the case may be, by the lesser of ten percent (10%) or the net annual change in the Consumer Price Index as published in the applicable government publication. Contractor may increase its fees by the lesser of 10% per year or the percentage of increase in the average Consumer Price Index ("CPI") for Greater Houston as published by the U. S. Department of Labor for the current year over the average CPI for the first twelve months of the Agreement.

**I. Personnel of the Contractor:**

Contractor shall replace any personnel assigned to provide services under this Contract who are deemed unsuitable by the Fire Chief and/or designee.

**J. Disaster Training Participation:**

Disaster training (MCI) participation will be provided by the Houston Fire Department. Contractor will not charge city when they attend any training related to disaster preparedness

## EXHIBIT "C"

### EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

**EXHIBIT "D"**  
**DRUG POLICY COMPLIANCE AGREEMENT**

I, STEVE ALDRETE VICE PRESIDENT OPS as an owner or officer of  
(Name) (Print/Type) (Title)  
AMERICAN MEDICAL RESPONSE OF TEXAS INC. (Contractor)  
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug-testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date 7/26/05

Contractor Name AMERICAN MEDICAL RESPONSE OF TEXAS INC

Signature Steve Aldrete

Title VICE PRESIDENT OPERATIONS

### EXHIBIT "E"

#### Contractor's Certification Of No Safety Impact Positions In Performance Of A City Contract

I, STEVE ALDRETE VICE PRESIDENT OPERATIONS  
(Name)(Print/Type) (Title)

as an owner or officer of AMERICAN MEDICAL RESOURCES OF TEXAS INC (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

7/26/05  
Date

AMERICAN MEDICAL RESOURCES OF TEXAS INC.  
Contractor Name

Steve Aldrete  
Signature

VICE PRESIDENT OPERATIONS  
Title

#### CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES FOR CONTRACTORS

I, \_\_\_\_\_ as an owner or officer of  
(NAME) (PRINT/TYPE)

\_\_\_\_\_ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CONTRACTOR NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

**EXHIBIT "F"**  
**DRUG POLICY COMPLIANCE DECLARATION**

I, STEVE ALDRETE VICE PRESIDENT OPERATIONS as an owner or officer of  
(Name) (Print/Type) (Title)

AMERICAN MEDICAL RESPONSE OF TEXAS (Contractor or Vendor)  
(Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from 4/1/04 to 12/10, 2004.

A  
Initials A written Drug Free Workplace Policy has been implemented and employees notified.  
The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

A  
Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

A  
Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

A  
Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is 4/1/04.

A  
Initials From 4/1/04 to 12/20/04 the following test has occurred  
(Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	1	2	10	13
Number Employees Positive				1
Percent Employees Positive				.077

A  
Initials Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

A  
Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

7/20/05  
(Date)

STEVE ALDRETE  
(Typed or Printed Name)  
Steve Aldrete  
(Signature)  
VICE PRESIDENT OPERATIONS  
(Title)